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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ERIC BJORKLUND,

Plaintiff and Appellant,

v.

COUNTY OF SANTA  
BARBARA,

Defendant and Respondent.

2d Civil No. B278947  
(Super. Ct. No. 16CV00486)  
(Santa Barbara County)

Eric Bjorklund appeals the trial court's order dismissing his civil rights complaint against the County of Santa Barbara (the County) after the court sustained, without leave to amend, the County's demurrer to his second amended complaint. We affirm.

## BACKGROUND

In February 2015, Bjorklund discovered a swamped panga boat<sup>1</sup> while fishing off the Santa Barbara coast. He towed the panga to the Santa Barbara harbor. Sheriff's deputies met Bjorklund there and demanded that he release the panga to them. When he refused, the deputies called the district attorney's office to "seek supervisory instruction." A deputy district attorney instructed them to arrest Bjorklund and take possession of the boat. They did, cited Bjorklund, and released him at the scene.

Bjorklund filed a series of civil rights complaints against the County, sheriff's office, and deputies. Bjorklund's second amended complaint alleges that the County is liable because the deputy district attorney was acting as a policymaker for the County when he instructed the sheriff's deputies to arrest him and seize the panga. (See *Monell v. Dept. of Social Services* (1978) 436 U.S. 658.) The County demurred to the complaint. The trial court sustained the demurrer without leave to amend and dismissed Bjorklund's case.

## DISCUSSION

The function of a demurrer is to test whether the facts alleged in the complaint state a cause of action under any legal theory. In making this determination, we assume the truth of all facts properly pleaded, as well as facts of which the trial court properly took judicial notice. But we do not assume the truth of contentions, deductions, or conclusions of law. Our

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<sup>1</sup> A panga boat is "an open-bow vessel commonly used for smuggling." (*United States v. Ramos-Atondo* (9th Cir. 2013) 732 F.3d 1113, 1117.)

review is de novo. (*Templeton Action Committee v. County of San Luis Obispo* (2014) 228 Cal.App.4th 427, 430-431.)

A local government is liable for “policies that cause constitutional torts.” (*McMillian v. Monroe County* (1997) 520 U.S. 781, 784.) “These policies may be set by the government’s lawmakers, ‘or by those whose edicts or acts may fairly be said to represent official policy.’ [Citation.]” (*Ibid.*) Whether one’s acts represent official policy is analyzed under state law. (*Venegas v. County of Los Angeles* (2004) 32 Cal.4th 820, 831.) In California, district attorneys represent the state, not the counties, when they investigate and prosecute crimes. (*Pitts v. County of Kern* (1998) 17 Cal.4th 340, 362.)

The County has no liability here. Bjorklund refused the sheriff’s deputies’ demands to release the panga to them. The deputies then called the district attorney to ask what to do next. The deputy district attorney acted on behalf of the state when he responded to the deputies’ questions. That absolves the County of liability. The contrary assertion in Bjorklund’s reply brief does not change this fact; the court does not assume the truth of conclusions of law asserted in a complaint. The trial court properly sustained the County’s demurrer without leave to amend.

#### DISPOSITION

The judgment is affirmed. The County shall recover costs on appeal.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Thomas Pearce Anderle, Judge

Superior Court County of Santa Barbara

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Eric Bjorklund, in pro. per., for Plaintiff and  
Appellant.

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Abanise, Deputy County Counsel, for Defendant and Respondent.